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December 22, 2003

**VIA EXPRESS MAIL EV012053840US**  
**MAIL STOP: PATENT APPLICATION**  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450

31355 U.S. PTO  
 10/743510  
 122203

Re: Mitelberg et al. - Matter No. 25647-410461  
Divisional Patent Application for: INTRAVASCULAR STENT DEVICE

Sir:

Transmitted for filing herewith is the above-captioned patent application, including two sheets of patent drawings (Figures 1 - 3); a Declaration and Power of Attorney; and a Statement Submitted with Filing.

The filing fee was calculated as follows:

<u>For</u>	<u>Number</u> <u>Filed</u>	<u>Extra</u> <u>Claims</u>	<u>Number Rate</u>	<u>Non-Small</u> <u>Entity</u> <u>Fee Paid</u>
				\$ 770.00
Total Claims	24	- 20 = 4	x \$18.00	\$ 72.00
Independent Claims	2	- 3 =	x \$86.00	
			Total Filing Fee	\$842.00

Sincerely yours,

SEYFARTH SHAW LLP



Garrettson Ellis  
 Reg. No. 22,792

GE/ajw  
 Enclosures

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: )  
Mitelberg et al. )  
For: INTRAVASCULAR STENT DEVICE )

**EXPRESS MAIL CERTIFICATE**

MAIL STOP: PATENT APPLICATION

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

"Express Mail" label number EV 012053840 US

Date of Deposit: December 22, 2003

I hereby certify that the following attached papers: check (\$842.00), transmittal letter, patent application (specification and claims, abstract), 2 sheets of drawings, a Combined Declaration and Power of Attorney and a Statement Submitted with Filing are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Garrettson Ellis, Reg. No. 22,792

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
(Docket No. 410460)

In re the Application of: )  
 )  
VLADIMIR MITELBERG ET AL. )  
 )  
For: INTRAVASCULAR STENT DEVICE )  
 )

TO: MAIL STOP:  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**STATEMENT SUBMITTED WITH FILING**

Dear Sir:

Referring to the Office Action of October 24, 2003, in parent application Serial No. 10/163,248, we have the following comments.

The examiner correctly notes that the abstract of Kanesaka et al. U.S. Patent 5,810,872 includes the statement "The elongated members generally extend parallel to a central axis of the cylindrical shape."

As will be discussed, this apparently is referring to the fact that the "elongated members" extend in a spiral about the central axis to define a cylindrical shape, with the cylindrical shape having a central axis. This is a meaning for the phrase "parallel to a central axis" that is questionable, and is not the meaning of the term "generally parallel" in the specification, or the term "extending generally in the same direction" as found in claim 1. Please keep in mind that the patentee can be his own lexicographer. What is meant in this application by "generally parallel" is just that, i.e., generally extending in the same direction as the axis of the stent. A spiral direction around an axis is not the "same direction" as the axis.

In the Merriam-Webster Online Dictionary, "parallel" has a first definition of "extending in the same direction, everywhere equidistant, and not meeting ..." (copy enclosed). Furthermore, the examiner is urged to note, in Kanesaka et al., 5,810,812, column 3, lines 50 and 51: "The stent 10 is formed of a diagonally arranged strip 11 as shown in Fig. 2, which is wound spirally in a cylindrical shape. The strip 11 includes two tortuous members 12, 13 connected by connecting members or joint struts 14."

This provides the context of the statement of Kanesaka et al. in the abstract.

Also, turning to the second embodiment of Figs. 6 and 7 of Kanesaka et al., note at column 4, lines 50-52: "Figs. 6 and 7 show a second embodiment 20 of the stent of the invention, which is formed by spirally winding two strips 21 situated adjacent to each other."

Thus, in the case of both embodiments, it can be seen that the respective strips 11 and 21, which are deemed to be the "elongated members" referred to in the Kanasaka, et al. abstract, extend in a spiral direction. This is by no means parallel to, or in the same direction as, the stent cylinder axis.

Furthermore, as discussed beginning on page 14 of the last amendment, we see what the direction of the stent axis is in Kanesaka et al. by the statement at column 4, lines 58 and 59: "The struts 25 extend substantially parallel to the central axis of the stent 20..."

Unfortunately, the reference numeral 25 is not shown in Fig. 6, but is shown in Fig. 7. One can see that the fragmentary view of the part of Fig. 6 which constitutes Fig. 7 is a portion on the left-hand side of Fig. 6. Beginning with the strand circle that is shown on the left side, the arrangement of the respective strands and struts can be

seen to be identical in Figs. 6 and 7. Particularly, one can identify the strut 25, which is stated by Kanesaka et al. to be "substantially parallel to the central axis of the stent 20..." From this, it can be seen that the arrays of parallel, undulating members 22, 23 in Fig. 6 by no means extend generally parallel to, or in the same direction as, the central axis. They extend spirally, and only the spiral extends in the same overall direction as the central axis of the stent 20.

To come to any other conclusion would be to completely destroy the meaning of words. Can it be that in Kanesaka et al. struts 25 are generally parallel to the central axis, and also strips 21 are generally parallel to the central axis, so that everything is generally parallel to the central axis?

It is submitted that it would be deemed reversible error to construe prior art in this manner to block the patentability of a claim, and, particularly, it is submitted that those skilled in the art would never construe the prior art in that way.

As called for in claim 1, the undulating members of this invention must be "...extending generally in the same direction as the longitudinal axis of said tubular member..." The specific, extending elongated members 21 of Kanesaka et al. clearly do not extend "generally in the same direction as" their central axis.

In view of the above, it is submitted that claim 1 and its dependent claims are patentable.

Claim 16 represents a combination of allowed claims 1 and 9 of the parent application.

In view of the above, allowance of the claims is respectfully requested.

Respectfully submitted,

SEYFARTH SHAW LLP

A handwritten signature in cursive script, appearing to read "Garrettson Ellis", is written over a horizontal line.

Garrettson Ellis

Registration No. 22,792

Attorney for Applicant

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